IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

OP.No. 6944 of 2000(B)

PETITIONER:

RAMASWAMY, MARGERETH VILLA, ANSARI STREET, UDUMELPET.

BY ADV. SRI.P.RAMAKRISHNAN
SRI.T.C.KRISHNA

RESPONDENTS:

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1. **APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT (REGIONAL JOINT LABOUR COMMISSIONER), KAKKANAD, ERNAKULAM.**

2. **CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT (DISTRICT LABOUR OFFICER), THODUPUZHA.**

3. **TATA TEA LTD. REPRESENTED BY ITS GENERAL MANAGER, REGIONAL OFFICE, MUNNAR.**

BY GOVERNMENT PLEADER SMT. M.R. SREELATHA.
SRI. K.K. NANDAKUMAR.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.6944 OF 2000.

EXT.P1: TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 6.6.97.

EXT.P2: TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 20.3.99.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

O.P.No.6944 OF 2000

Dated this the 29th day of November, 2007

JUDGMENT

The petitioner was an employee of the 3rd respondent Company, who filed an application before the 2nd respondent controlling authority under the Payment of Gratuity Act, seeking direction to the 3rd respondent to pay gratuity under the Act. The controlling authority computed the gratuity as Rs.40,005/- but dismissed the claim on the ground that the amount has already been paid, for which the petitioner had already issued a receipt. The said order is Ext.P1. The 1st respondent appellate authority upheld the order of the controlling authority by Ext.P2 order in appeal. The petitioner is challenging Exts.P1 and P2 orders in this writ petition.

2. The contention of the petitioner is that the receipt relied upon by the 3rd respondent is a concocted one. According to him, a complaint was filed by the 3rd respondent Company before the Police alleging theft of tea leaves by the petitioner, in respect of which the petitioner was called to the police station.

Originally they obtained a resignation letter under coercion and later on he withdrew the same. Thereafter the petitioner was again called to the Police station some time later and again a resignation letter was obtained from him. He was also forced to execute a receipt stating the same to be the receipt for accepting gratuity, although the gratuity amount was not paid to him. He submits that a bearer cheque for the amount of gratuity was drawn up and after encashing the same, the same was sought to be adjusted against alleged amounts due from him, after obtaining a receipt from the petitioner for the cheque amount. According to him, he was suspended from service and he continued under suspension till the date of superannuation and after the date of superannuation, he filed claim before the controlling authority for gratuity. His contention is that the documents relied upon by the respondents are concocted documents to deprive the petitioner of his legitimate dues.

3. The 3rd respondent would stoutly oppose the contentions of the petitioner. According to the learned counsel for the 3rd respondent, the documents produced by them and relied upon by the lower authorities are genuine

documents executed by the petitioner. He points out that even according to the petitioner the incident, which the petitioner alleges to have happened under coercion, happened in February, 1989 and the gratuity claim was filed only in 1995. At no point of time between February 1989 and 1995 did the petitioner raise any contention before any authority that he had not resigned and that he was not paid the amounts covered by the documents now produced by the 3rd respondent.

4. The counsel for the petitioner would try to convince me that the very situation in which the whole incidents took place speaks volumes about the fraud committed by the 3rd respondent on the petitioner to deprive him of his legitimate claims.

5. I have considered the rival contentions in detail. The petitioner has no case that between 1989 and 1995 he has approached any authority either in respect of denial of employment to him or in respect of any service benefits. He never withdrew the resignation or sought to resile from the receipt and other documents admittedly executed by him on the ground that they were obtained under coercion. Although

he claims that he was suspended from service, he has no case that he approached the authorities under the Payment of Subsistence Allowance Act claiming subsistence allowance. He does not dispute that the receipt relied upon by the respondents has been executed by him. His only contention is that it has been executed under coercion. If it was under coercion, the normal thing he would have done was to retract from the same at the earliest opportunity. In fact he himself admits that on an earlier occasion he had done exactly that. Therefore in the absence of evidence to show that the petitioner had in fact retracted from the documents admittedly signed by him, he cannot now raise contentions against those documents. Respondents 1 and 2 have only relied upon the documents by which the petitioner himself had admitted that he had received the gratuity amounts in question. That being so, there is no merit in this original petition and accordingly the same is dismissed.

S. SIRI JAGAN, JUDGE

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